

## **Chapter 1**

### **General Provisions Relating to Agricultural Cooperative Associations**

#### **3-1-1 Declaration of policy.**

It is the declared policy of this state, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this act shall be liberally construed.

Amended by Chapter 378, 2010 General Session

#### **3-1-1.1 General corporation laws do not apply.**

Title 16, Chapter 10a, Utah Revised Business Corporation Act, does not apply to domestic or foreign corporations governed by this chapter, except as specifically provided in Sections 3-1-13.4, 3-1-13.7, and 3-1-16.1.

Amended by Chapter 79, 1996 General Session

#### **3-1-2 Definitions.**

As used in this act, unless the context or subject matter requires otherwise:

- (1) "Agricultural products" includes floricultural, horticultural, viticultural, forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.
- (2) "Articles" means the articles of incorporation.
- (3) "Association" means a corporation organized under this act, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this state, organized under any general or special act as a cooperative association for the mutual benefit of its members, as agricultural producers, and which confines its operation to purposes authorized by this act and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this act for associations organized hereunder.
- (4) "Board" means the board of directors.
- (5) "Domestic associations" means an association or corporation formed under the laws of this state.
- (6) "Foreign association" means an association or corporation not formed under the laws of this state.
- (7) "Member" includes the holder of a membership of which there shall be but one class, in an association without stock and the holder of common stock in an association organized with stock.
- (8) "Person" includes an individual, a partnership, a corporation and an association.
- (9) "Producer" means a person who produces agricultural products, or an association of such persons.
- (10)
  - (a) "This act" means the "Uniform Agricultural Cooperative Association Act."
  - (b) Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.

Amended by Chapter 324, 2010 General Session

**3-1-3 Qualifications of incorporators.**

- (1) Five or more individuals may form an association if they are:
  - (a) at least 18 years of age; and
  - (b) engaged in agriculture.
- (2) One or more associations of individuals engaged in agriculture referred to in Subsection (1) may form an association.

Amended by Chapter 70, 2003 General Session

**3-1-4 Purposes.**

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

- (1) producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or manufacturing or marketing the by-products thereof;
- (2) seed and crop improvement, and soil conservation and rehabilitation;
- (3) manufacturing, buying or supplying to its members and others, machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and all other agricultural and household supplies;
- (4) generating and distributing electrical energy and furnishing telephone service to its members and others;
- (5) performing or furnishing business or educational services, on a co-operative basis, for or to its members; or
- (6) financing any of the above enumerated activities.

Amended by Chapter 324, 2010 General Session

**3-1-5 Articles of incorporation.**

- (1)
  - (a) Articles of incorporation shall be signed in duplicate by each of the incorporators and acknowledged before a notary public.
  - (b) Where the incorporators are associations, the president and secretary of each of the associations shall sign the articles of incorporation, and their signatures shall be acknowledged as provided in Subsection (1)(a).
  - (c) The acknowledgment shall state that it is the good faith intention of the incorporators to commence and carry on the business specified in the articles, and if the incorporators are individuals, that each of them is at least 18 years of age.
- (2)
  - (a)
    - (i) The articles shall state the name of the association, which may include the word "cooperative."
    - (ii) The corporate name shall be distinguishable from any registered name or trademark of record filed with the Division of Corporations and Commercial Code.
  - (b) A statement of the association's purposes shall be included in the articles.

- (c)
  - (i) The articles shall state the name and street addresses of each of the incorporators.
  - (ii) If the association is organized with stock, a statement of the number of shares subscribed by each incorporator, which may not be less than one share, and the class or classes of shares for which each incorporator subscribes shall be stated in the articles.
- (d) The name and address of the registered agent shall be stated in the articles.
- (e)
  - (i) The articles shall state whether the association was organized with or without stock.
  - (ii) If the association was organized with stock, the total authorized number of par value shares and the par value of each share shall be specified.
  - (iii) If any of the association's shares have no par value, the authorized number of the shares shall be specified.
  - (iv) If more than one class of stock is authorized, the following shall be specified:
    - (A) a description of the classes of shares;
    - (B) the number of shares in each class;
    - (C) the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class; and
    - (D) the dividends to which each class shall be entitled.
  - (v)
    - (A) If only one class of stock is authorized, it shall be common, and if more than one class is authorized, one class shall be designated common stock.
    - (B) Common stock shall carry all voting rights.
- (f)
  - (i) If the association is organized without stock, the articles shall state whether the property rights and interest of each member are equal or unequal.
  - (ii) If the property rights and interests are unequal, the articles shall state the rule by which those rights and interests shall be determined.
- (3) The articles may also contain other provisions, consistent with the provisions of this chapter, for:
  - (a) regulating the association's business or the conduct of its affairs;
  - (b) the establishment of voting districts;
  - (c) the election of delegates to represent voting districts and the members residing within them;
  - (d) representation of each district upon the board of directors;
  - (e) changing the number of directors to correspond to changes in the number of districts; and
  - (f) the issuance, retirement, and transfer of memberships and stock.

Amended by Chapter 204, 1994 General Session

### **3-1-6 Filing articles of incorporation -- Certificate of incorporation -- Fees -- Constructive notice.**

- (1) The articles of incorporation shall be filed with the Division of Corporations and Commercial Code, which shall thereupon issue a certificate of incorporation. This certificate or a certified copy of the same shall be prima facie evidence of the due incorporation of the association. Upon the issuance of such certificate of incorporation, the corporate existence begins.
- (2) The Division of Corporations and Commercial Code shall establish a fee pursuant to Section 63J-1-504 for filing articles of incorporation with the division, for securing a certified copy of the articles, for the issuance of a certificate of incorporation, and for filing amendments to the articles, whether incorporated with or without stock.

- (3) No person dealing with the association may be charged with constructive notice of the contents of the articles or amendments thereto by reason of such filing or recording.

Amended by Chapter 183, 2009 General Session

### **3-1-7 Amendments to articles of incorporation.**

- (1) An association may amend its articles of incorporation by the affirmative vote of a majority of the members voting at:
  - (a) a regular meeting; or
  - (b) a special meeting called for that purpose.
- (2) Written notice of the proposed amendment and of the time and place of the meeting shall be provided to the members of the association by any one of the following procedures:
  - (a) by mail at the last-known address at least 10 days prior to the meeting;
  - (b) by personal delivery at least 10 days prior to the meeting; or
  - (c) by publication not less than 10 days or more than 60 days prior to the meeting:
    - (i) in a periodical published by or for the association, to which substantially all of its members are subscribers or;
    - (ii) in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates; and
    - (iii) as required in Section 45-1-101.
- (3) In addition to one of the means set forth in Subsection (2), the association may give notice by any method established pursuant to the articles of incorporation or bylaws of the association.
- (4) The bylaws may require that the notice period be longer than 10 days.
- (5) An amendment affecting the preferential rights of any outstanding preferred stock may not be adopted until the written consent of the holders of a majority of the outstanding preference shares has been obtained.
- (6) After an amendment has been adopted, articles of amendment shall be:
  - (a) prepared, in duplicate, setting forth the amendment and the fact of the adoption;
  - (b) signed and acknowledged by the president, chair, vice president, or vice chair and by the secretary or treasurer; and
  - (c) filed in the same manner as the original articles of incorporation.

Amended by Chapter 388, 2009 General Session

### **3-1-8 Bylaws.**

The members of the association shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. Bylaws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The bylaws may provide for:

- (1) the time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;
- (2) the manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations;
- (3) subject to any provision thereon in the articles and in this act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- (4) the time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

- (5) rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders;
- (6) penalties for violations of the bylaws; and
- (7) such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act.

Amended by Chapter 324, 2010 General Session

### **3-1-9 Powers.**

- (1) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have power and capacity to act possessed by natural persons and may do each and everything necessary, suitable, or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers, and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.
- (2) Without limiting or enlarging the grant of authority contained in Subsection (1), it is hereby specifically provided that every such association shall have authority:
  - (a) to act as agent, broker, or attorney in fact for its members and other producers, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf;
  - (b) to make contracts and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;
  - (c) to make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security;
  - (d) to establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the bylaws of the association;
  - (e) to own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing any of the products handled by the association; or, in financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;
  - (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require;
  - (g) to borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge;
  - (h) to deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made

for persons who are neither members nor producers may not exceed 15 per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and nonmember business transacted by such association;

- (i) if engaged in marketing the products of its members, to hedge its operations;
- (j) to have a corporate seal and to alter the same at pleasure;
- (k) to continue as a corporation for the time limited in its articles, and if no time limit is specified then perpetually;
- (l) to sue and be sued in its corporate name;
- (m) to conduct business in this state and elsewhere as may be permitted by law; and
- (n) to dissolve and wind up.

Amended by Chapter 378, 2010 General Session

### **3-1-10 Members -- Qualifications and liabilities -- Voting rights.**

- (1) As used in this section, "patronage" means business or services transacted or performed by a member or shareholder with an association.
- (2)
  - (a) An association may only have as members or issue common stock to:
    - (i) current producers of agricultural products;
    - (ii) tenants and landlords receiving a share of the crop; and
    - (iii) cooperative associations of those producers.
  - (b) The incorporators named in the articles shall be members of the association, and shall pay the same amount and in the same manner for their membership or stock as do other members.
- (3) A stockholder may not hold more than one share of the common voting stock.
- (4)
  - (a) Under the terms and conditions prescribed in the bylaws, a member shall lose his or her membership if that member no longer qualifies for membership under this section.
  - (b) Despite termination of membership under Subsection (4)(a), the former member shall remain subject to any liability he or she incurs while a member of the association.
- (5) A member is not personally liable for any debt or liability of the association.
- (6)
  - (a)
    - (i) A member or stockholder is entitled to:
      - (A) one vote based on the amount of stock or membership capital owned; and
      - (B) additional votes, if the bylaws provide that a member or shareholder is entitled to more than one vote based on actual patronage of the association.
    - (ii) A vote may not be cast by proxy, unless the member is a corporation, in which case its vote may be cast by an authorized representative.
  - (b)
    - (i) The bylaws of an association may provide that a member may vote by signed ballot.
    - (ii) The member's signature on a ballot shall be notarized by a notary public before the ballot can be counted in any election.

Amended by Chapter 70, 2003 General Session

**3-1-11 Certificates of and termination of membership -- Dividends and distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

- (1) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.
- (2) Dividends in excess of eight per centum per annum on the actual cash value of the consideration received by the association may not be paid on common stock or membership capital, but dividends may be cumulative if so provided in the articles or bylaws.
- (3)
  - (a) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage.
  - (b) The bylaws may provide that any distribution to a nonmember, who is eligible for membership, may be credited to that nonmember until the amount of the distribution equals the value of a membership certificate, or a share of the association's common stock.
  - (c) The distribution credited to the account of the nonmember may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.
- (4)
  - (a) The bylaws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated.
  - (b) Provisions for forfeiture of membership interests may be made in the bylaws.
  - (c) After the termination of the membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets, or activities of the association. The withdrawing member may not claim or receive any assets of the association except as follows:
    - (i) undistributed patronage allocated to the withdrawing member may be paid to the withdrawing member pursuant to the association's bylaws;
    - (ii) the withdrawing member may be reimbursed for the par value of membership or stock in the association pursuant to the association's articles, bylaws, and membership agreement; and
    - (iii) the withdrawing member shall receive any distributions to which the member is entitled pursuant to Subsection 3-1-20(3)(d).
- (5)
  - (a) An association may issue preferred stock to members and nonmembers.
  - (b) Preferred stock may be redeemed or retired by the association on the terms and conditions as are provided in the articles or bylaws and printed on the stock certificates.
  - (c) Preferred stockholders may not vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of a majority of the preferred stock has been obtained.
  - (d) Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property, as determined by the board.
- (6)
  - (a) The association may issue to each member a certificate of interest evidencing the member's interest in any fund, capital investment, or other assets of the association.
  - (b) Those certificates may be transferred only to the association, or to other purchasers, as approved by the board of directors, under the terms and conditions provided for in the bylaws.
- (7)
  - (a) As used in this Subsection (7), "reasonable effort" means:

- (i) a letter to a member's or former member's last-known address, a listing of unclaimed credits in an association publication, and the posting of a list of unclaimed credits at the association's principal place of business; and
  - (ii) publishing a list of the unclaimed credits exceeding \$25 each, or greater, in a newspaper of general circulation in the area where the association's principal offices are located.
- (b) The association may retain revolving certificates of interest described in this Subsection (7) as an exception to the provisions of Title 67, Chapter 4a, Unclaimed Property Act, if:
  - (i) the board of directors of the association determines to revolve the certificates and the certificates remain unclaimed by the association's members or former members for five years after the credit is declared;
  - (ii) the association is authorized to retain those credits by its bylaws;
  - (iii) the board of directors of the association approves the retention; and
  - (iv) before retaining the credits, the association makes a reasonable effort to locate and communicate the issuance of the credits to the members or former members.
- (c)
  - (i) The board of directors may either add the unclaimed credits as a contribution to the capital fund, or use them to establish an agricultural educational program as described in Subsection (7)(c)(ii).
  - (ii) If the board of directors chooses to use the unclaimed credits to establish an agricultural educational program, it shall establish an agricultural educational program to:
    - (A) provide scholarships for low income and worthy students to colleges and universities;
    - (B) provide funding for director training and education;
    - (C) provide funds for cooperative education programs in secondary or higher education institutions; or
    - (D) provide other educational opportunities.
  - (iii) The board of directors may not distribute unclaimed credits to current patrons of the association.
  - (iv) Upon dissolution of an association, the board of directors shall report and remit unclaimed credits to the Division of Unclaimed Property.
- (d)
  - (i) Each association that applies credits under Subsection (7)(c) during a calendar year shall file an annual report with the State Treasurer by April 15 of the following year.
  - (ii) The report shall specify:
    - (A) the dollar amount of credits applied during the year;
    - (B) the dollar amount of credit paid to claimants during the year; and
    - (C) the aggregate dollar amount of credits applied since January 1, 1996.
- (e) At any time after the association retains credits under this Subsection (7), the association shall pay the members, former members, or their successors in interest, the value of the credit, without interest, if the members, former members, or their successors in interest:
  - (i) file a written claim for payment with the association; and
  - (ii) surrender the certificate issued by the association that evidences the credit.

Amended by Chapter 378, 2010 General Session

### **3-1-12 Meetings.**

Within 90 days after the incorporation of an association the members thereof shall hold an organization meeting at a time and place fixed by the temporary board of directors. Not less than 10 days' written notice thereof shall be given to each member. An association may provide in



its bylaws for one or more regular meetings each year, which may be held within or without the state at the time and place designated in the bylaws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when 10% of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law or the articles or bylaws, shall be mailed to each member at least 10 days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the bylaws may require that all notices shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

No Change Since 1953

### **3-1-12.1 Quorum -- Voting.**

- (1) The bylaws of the association shall prescribe the number of members or shareholders which constitutes a quorum.
- (2) Where a quorum was initially present at a meeting, a majority vote of the votes entitled to be cast shall be necessary for the adoption of any matter on which a vote was cast, unless a greater proportion is required by this chapter or the articles of incorporation of the association.
- (3) If the articles of incorporation require the vote of a greater proportion of members than that required by this chapter, the provisions of the articles of incorporation shall control.

Enacted by Chapter 202, 1994 General Session

### **3-1-12.2 Waiver of notice.**

- (1) A written waiver of notice signed at any time by the member waives the notice requirement under this chapter, the articles of incorporation, or the bylaws.
- (2) A member's attendance at a meeting waives an objection to lack of notice unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice.

Enacted by Chapter 202, 1994 General Session

### **3-1-13 Directors.**

- (1)
  - (a)
    - (i) Except as provided in Subsection (1)(c), the business of the association shall be managed by a board of not less than three directors.
    - (ii) At least two-thirds of the directors shall be members of the association, or officers, directors, or members of a member association.
  - (b) A director shall hold office for the term for which he or she was named or elected and until a successor is elected.
  - (c) If an association has less than three associations of producers as its members, the association may be managed by a board of two directors, each of whom shall be an officer, director, or member of a member association.
- (2) Directors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

- (3) Subject to the provisions of this chapter, the articles, or bylaws, shall specify the:
  - (a) number;
  - (b) qualifications;
  - (c) terms of office;
  - (d) manner of election;
  - (e) time and place of meeting; and
  - (f) powers and duties of the directors.
- (4) Unless otherwise provided in the articles or bylaws, a director shall be elected for a term of one year.
- (5)
  - (a)
    - (i) Unless otherwise provided in the articles or bylaws and except as provided in Subsection (5)(b), a vacancy on the board, other than by expiration of term, shall be filled by the remaining members of the board.
    - (ii) A director elected by the remaining members of the board shall serve until a successor is elected by the members at the next annual meeting of the members, or at a special meeting.
  - (b)
    - (i) If the bylaws provide for the election of directors within districts, the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy.
    - (ii) Unless otherwise provided in the articles or bylaws, a director elected by a district shall serve until a successor is elected at the next regular meeting at which a director or directors are to be elected.
- (6)
  - (a) If not restricted by the articles, the bylaws may provide that the:
    - (i) area in which the association has members shall be divided into districts; and
    - (ii) directors shall be elected within those districts.
  - (b) The directors may be elected either directly or by district delegates elected by the members in that district.
  - (c) The bylaws shall specify, or authorize the board of directors to determine:
    - (i) the number of directors to be elected within each district;
    - (ii) the apportionment of the directors; and
    - (iii) the method of changing district boundaries.
  - (d) The bylaws may provide that primary elections shall be held in each district to nominate its directors, and that the result of the primary elections may be:
    - (i) ratified at the next regular meeting of the association; or
    - (ii) considered to be the final election.
- (7)
  - (a) The bylaws may provide for an executive committee to be elected by the board of directors from its members and may delegate to this committee the functions and powers of the board.
  - (b) The executive committee shall be subject to the general direction and control of the board.

Amended by Chapter 70, 2003 General Session

### **3-1-13.1 Limitation of personal liability of officers and directors.**

- (1) The articles of incorporation may include a provision eliminating or limiting the personal liability of a director or an officer to the association or its members for monetary damages for breach of fiduciary duty, but the provision may not eliminate or limit the liability of a director or an officer:

- (a) for any breach of the director's or officer's duty of loyalty to the association or its members;
  - (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
  - (c) for any transaction from which the director or officer derived an improper personal benefit.
- (2) No provision authorized under this section may eliminate or limit the liability of a director or an officer for any act or omission occurring prior to the date when the provision becomes effective.
- (3) Any provision authorized under this section to be included in the articles of incorporation may also be adopted in the bylaws or by resolution, but only if the provision is approved by the same percentage of members as is required to approve an amendment to the articles of incorporation.
- (4) Any foreign association authorized to transact business in this state may adopt any provision authorized under this section.
- (5)
- (a) Except as otherwise provided by state or federal laws, an officer or director is not personally liable for any injury to a person or property arising out of a tort committed by another employee of the association unless:
    - (i) the officer or director was personally involved in the situation giving rise to the litigation; or
    - (ii) the officer or director committed a criminal offense.
  - (b) The protection provided by this subsection does not restrict other rights that an officer or director may have.

Amended by Chapter 204, 1994 General Session

**3-1-13.2 Place and notice of directors' meetings -- Action without meeting -- Meetings by telephone conference calls.**

- (1) Regular or special meetings of the board of directors may be held either within or without this state.
- (2) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon the notice prescribed in the bylaws. A director's attendance at a meeting constitutes a waiver of notice of that meeting, except if a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors must be specified in the notice of waiver of notice of the meeting unless required by the bylaws.
- (3) Unless otherwise provided by the articles of incorporation or bylaws, any action required by this act to be taken at a meeting of the directors of an association, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action taken, shall be signed by all of the directors or members of the committee. This consent shall have the same effect as a unanimous vote.
- (4) Unless otherwise provided in the articles of incorporation or bylaws, members of the board of directors of any association, or committee designated by the board, may participate in a meeting of the board or committee by conference telephone or similar communications equipment. Participation in a meeting under this subsection shall constitute presence in person at the meeting.

Enacted by Chapter 27, 1989 General Session

### **3-1-13.3 General standards of conduct for directors and officers.**

- (1) A director shall perform his duties as a director, and as a member of a committee, and each officer with discretionary authority shall perform his duties under that authority:
  - (a) in good faith;
  - (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and
  - (c) in a manner the director or officer reasonably believes to be in the best interests of the association.
- (2) In performing his duties, a director or officer may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (a) one or more officers or employees of the association whom the director or officer reasonably believes to be reliable and competent in the matters presented;
  - (b) legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or
  - (c) in the case of a director, a committee of the board of directors of which he is not a member, if the director reasonably believes the committee merits confidence.
- (3) A director or officer is not acting in good faith if he has knowledge that makes reliance otherwise permitted by Subsection (2) unwarranted.
- (4) A director or officer is not liable to the association, its members, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as an officer or director unless:
  - (a) the director or officer has breached or failed to perform the duties of the office in compliance with this section; and
  - (b) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the association or the members.

Enacted by Chapter 204, 1994 General Session

### **3-1-13.4 Indemnification of officers, directors, employees, fiduciaries, and agents.**

- (1) The association shall have the same powers, rights, and obligations and shall be subject to the same liabilities as apply to corporations for profit as set forth in Sections 16-10a-901 through 16-10a-909.
- (2)
  - (a) Association directors, officers, employees, fiduciaries, and agents shall have the same rights of indemnification as directors, officers, employees, fiduciaries, and agents, respectively, of corporations for profit as set forth in Sections 16-10a-901 through 16-10a-909.
  - (b) A reference in Sections 16-10a-901 through 16-10a-909:
    - (i) to shareholders shall be construed to refer to voting members or shareholders for the purpose of this section; and
    - (ii) to corporations shall be construed to refer to associations.

Enacted by Chapter 204, 1994 General Session

### **3-1-13.5 Conflicts of interest.**

- (1) A director does not have a conflict of interest and is entitled to vote on any matter for which the action to be taken or decision to be made by the board relates to matters which have application to other members which are similarly situated to the director or to the member association which the director represents.

- (2) Except as provided in Subsection (1), each director on the board of an association has a duty to serve the association as a whole and not the individual members of the association. This duty applies even when the director's own personal interests as a member or representative of a member may be contrary to the interests of the association.
- (3)
- (a) As used in this section, "interested director" means a director who has a direct financial interest in a transaction or contract being considered by the board or committee of an association, whether as a member of the association or as a representative of a member association.
  - (b) Interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee which authorizes, approves, or ratifies a contract or transaction.
  - (c) Interested directors shall be excluded from a board or committee meeting during the discussion and vote on a matter in which the director has a direct financial interest, unless a majority of the disinterested directors on the board vote that the interested director may remain at the meeting.
- (4) Except as provided in Subsections (1) and (3)(c), every contract or transaction between the association and one or more of its directors shall be void, or voidable by the association, if:
- (a) the director is present at or participates in the discussion at the board or committee meeting which authorizes, approves, or ratifies the contract or transaction; or
  - (b) the vote of the interested director is counted in the vote of the board or the committee.
- (5) Notwithstanding Subsection (4), a transaction between the association and one or more of its directors is not void, or voidable by the association, if:
- (a) the material facts as to the relationship or interest of the director and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes, approves, or ratifies the contract or transaction by the affirmative vote of a majority of the disinterested directors, even if the disinterested directors are less than a quorum;
  - (b) the material facts as to the relationship or interest of the director and as to the contract or transaction are disclosed or are known to the members of the association entitled to vote, and the contract or transaction is specifically authorized, approved, or ratified in good faith by a vote of the members; or
  - (c) the contract or transaction is fair to the association.

Enacted by Chapter 204, 1994 General Session

### **3-1-13.6 Quorum and voting.**

- (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:
- (a) a majority of the fixed number of directors if the association has a fixed board size; or
  - (b) a majority of the number of directors prescribed, or if no number is prescribed, a majority of the number in office immediately before the meeting begins.
- (2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is an action of the board of directors, unless the articles of incorporation, bylaws, or this chapter require the vote of a greater number of directors.
- (3) A director present at a meeting of the board of directors when action is taken is considered to have assented to the action taken at the meeting, unless:
- (a) the director votes against the action taken at the meeting;

- (b) the director objects at the beginning of the meeting, or promptly on arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;
  - (c) the director contemporaneously requests his dissent or abstention to any specific action to be entered into the minutes of the meeting; or
  - (d) the director gives to the presiding officer written notice of his dissent or abstention before adjournment of the meeting or within 24 hours after adjournment.
- (4) A director who votes in favor of an action taken may not dissent or abstain under Subsection (3).

Enacted by Chapter 204, 1994 General Session

### **3-1-13.7 Resignation of directors.**

- (1) A director may resign by giving written notice to the association.
- (2) A resignation of a director is effective when the notice is received by the association, unless the notice specifies a future effective date.

Enacted by Chapter 204, 1994 General Session

### **3-1-13.8 Director committees.**

- (1)
  - (a) Unless otherwise provided by the articles of incorporation or bylaws, a board of directors may create one or more committees and appoint members of the board of directors to serve on them.
  - (b) Each committee shall have two or more members who serve at the discretion of the board of directors.
- (2) The creation of a committee and appointment of members to it shall be approved by the greater of:
  - (a) a majority of all the directors in office when the action is taken; or
  - (b) the number of directors required by the articles of incorporation or bylaws to take action under Section 3-1-13.6.
- (3) Sections 3-1-13.2 and 3-1-13.6 shall apply to committees and their members.
- (4) The board of directors, the articles of incorporation, or the bylaws may provide the scope of the authority that each committee may exercise.
- (5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 3-1-13.3.

Amended by Chapter 378, 2010 General Session

### **3-1-14 Removal of director.**

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by 10 per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and the association may remove the director by a majority vote of the members voting thereon. The director whose removal is requested shall be served with a copy of the charges not less than 10 days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal shall have the same opportunity. In case the bylaws provide for election

of directors by districts, then the petition for removal of a director shall be signed by 20 per centum of the members residing in the district from which he was elected. The board shall call a special meeting of the members residing in that district to consider the removal of the director; and by a majority vote of the members of that district voting thereon the director in question shall be removed from office.

Amended by Chapter 378, 2010 General Session

### **3-1-15 Officers.**

The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles otherwise specifically provide, the president and at least one of the vice-presidents shall be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

Amended by Chapter 378, 2010 General Session

#### **3-1-15.1 Duties of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws, or, to the extent consistent with the bylaws, the duties prescribed by the directors or by the officer authorized by the board of directors to prescribe the duties of other officers.

Amended by Chapter 378, 2010 General Session

### **3-1-16 Removal of officer.**

Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by 10% of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than 10 days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

No Change Since 1953

#### **3-1-16.1 Resignation of officers.**

- (1) An officer may resign by giving written notice of the resignation to the association.
- (2) A resignation of an officer is effective when the notice is received by the association, unless the notice specifies a future effective date.
- (3) If a resignation is to be effective as of a future date, the board of directors may:
  - (a) allow the officer to remain in office until that date and fill the pending vacancy before the effective date, providing that the successor does not take office until the effective date; or
  - (b) remove the officer prior to the effective date and fill the resulting vacancy.

Enacted by Chapter 204, 1994 General Session

### **3-1-17 Contracts with association.**

- (1)
  - (a) The bylaws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it.
  - (b) If the members contract to sell through the association, the fact that for certain purposes the relation between the association and its members may be one of agency does not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract.
  - (c) Such title shall pass to the association upon delivery of the product, or at any other time specified in the contract.
  - (d) If the period of the contract exceeds three years, the bylaws and the contracts executed thereunder shall specify a reasonable period, not less than 10 days in each year, after the third year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association; provided, that if the bylaws or contracts executed hereunder so specify, a member may not withdraw from the association while indebted thereto.
  - (e) In the absence of such a withdrawal provision, a member may withdraw at any time after three years.
- (2) The contract may fix, as liquidated damages, which may not be regarded as penalties, specific sums to be paid by the members to the association upon the breach of any provision of the contract regarding the use of any facilities of the association or the sale, delivery, handling, or withholding of products; and may further provide that the member who breaks his contract shall pay all costs, including premiums for bonds, and reasonable attorney's fees, to be fixed by the court, in case the association prevails in any action upon the contract.
- (3)
  - (a) A court of competent jurisdiction may grant an injunction to prevent the breach or further breach of the contract by a member and may decree specific performance thereof.
  - (b) Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and a bond in such form and amount as may be approved by the court, the court may grant a temporary restraining order or preliminary injunction against the member.
- (4) No remedy, either legal or equitable, herein provided for, shall be exclusive, but the association may avail itself of any and all such remedies, at the same or different times, in any action or proceeding.
- (5) In any action upon such marketing contracts, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor of such a marketing contract; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord, or lessor.
- (6)
  - (a) The association may file contracts to sell agricultural products to or through the association in the office of the county recorder of the county in which the products are produced.



- (b) If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice president or secretary, containing or having attached thereto:
  - (i) a true copy of the uniform contract entered into with its members producing such product in that county; and
  - (ii) the names of the members who have executed such contract and a description of the land on which the product is produced, if such description is contained in the contract.
- (c) The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing such product in that county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof.
- (d) All affidavits filed under this section shall state in substance that they are filed pursuant to the provisions of this section.
- (e) The county recorder shall file such affidavits and make endorsements thereon and record and make entries thereof in the same manner as is required by law in the case of chattel mortgages, and he shall compile and make available for public inspection a convenient index containing the names of all signers of such contracts, and collect for his services hereunder the same fees as for chattel mortgages.
- (f) The filing of any such contract, or such affidavit, shall constitute constructive notice of the contents thereof, and of the association's title or right to the product embraced in such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to such product.
- (g) No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

Amended by Chapter 378, 2010 General Session

### **3-1-18 Inducing breach of contract -- False reports -- Penalty.**

A person or corporation whose officers or employees knowingly induce or attempt to induce a member or stockholder of an association to violate his marketing contract with the association, or who intentionally spreads false reports about its finances or management:

- (1) is guilty of a class A misdemeanor and is subject to a fine of not more than \$2,500 for each offense; and
- (2) may be held liable in a civil action to the association.

Amended by Chapter 202, 1994 General Session

### **3-1-19 Association not in restraint of trade -- Right to disseminate information.**

- (1) No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreement authorized in this act, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

- (2) An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations, and otherwise, past, present, and prospective crop, market, statistical, economic, and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.
- (3) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

Amended by Chapter 324, 2010 General Session

### **3-1-20 Voluntary dissolution -- Distribution of assets -- Proceedings.**

- (1)
  - (a) An association may be dissolved:
    - (i) at a regular meeting, or a special meeting called for that purpose;
    - (ii) after 30 days advance notice of the time, place, and object of the meeting is served on the members of the association as prescribed in the bylaws; and
    - (iii) by a two-thirds vote of the members voting.
  - (b)
    - (i) The members shall elect a committee of three members to act as trustees on behalf of the association, and the trustees shall liquidate and distribute the association's assets within the time fixed by the members.
    - (ii) The trustees may bring and defend actions necessary to protect and enforce the rights of the association.
    - (iii) Any vacancies in the trusteeship may be filled by the remaining trustees.
- (2)
  - (a) If an association dissolves pursuant to this section, the trustees, a creditor, a member, or the attorney general may bring an action in the district court in the county where the principal place of business of the association is located.
  - (b) The court may specify:
    - (i) appropriate notice of the time and place for the submission of claims against the association, which notice may require creditors of and claimants against the association to submit accounts and demands in writing at the specified place by a specific day, which date shall be at least 40 days from the date of service or first publication of the notice;
    - (ii) the payment or satisfaction of claims and demands against the association, or the retention of money for such purpose;
    - (iii) the administration of trusts or the disposition of the property held in trust by or for the association;
    - (iv) the sale and disposition of any remaining property of the association and the distribution or division of the property or its proceeds among the members or persons entitled to them; and
    - (v) other matters related to the dissolution.
  - (c) All orders and judgments shall be binding upon the association, its property and assets, trustees, members, creditors, and all claimants against it.
- (3) On dissolution, the assets of the association shall be distributed in the following manner and order:

- (a) to pay the association's debts and expenses;
  - (b) to return to any investors the par value of their capital;
  - (c) to pay patrons on a pro rata basis the amount of any patronage capital credited to their accounts; and
  - (d) if there is a surplus, to distribute it among those patrons who have been members of the association at any time during the last five years preceding dissolution or for a longer period of time if determined by the board of directors to be practicable, on the basis of patronage during that period.
- (4) After the final settlement by the trustees, the association shall be considered dissolved and shall cease to exist.
- (5) The trustees shall make a report in duplicate of the proceedings held under this section, which shall be signed, acknowledged, and filed as required for the filing of the articles of incorporation.
- (6) This section shall apply to all associations incorporated in this state.

Amended by Chapter 202, 1994 General Session

### **3-1-20.1 Grounds for judicial dissolution.**

- (1) An association may be dissolved in a proceeding by the attorney general if it is established that the association:
- (a) obtained its articles of incorporation through fraud; or
  - (b) has continued to exceed or abuse the authority conferred upon it by law.
- (2) An association may be dissolved in a proceeding brought by a shareholder if it is established that:
- (a) the directors are deadlocked in the management of the association affairs, the members are unable to break the deadlock, irreparable injury to the association is threatened or being suffered, or the business and affairs of the association can no longer be conducted to the advantage of the members generally, because of the deadlock;
  - (b) the directors, or those in control of the association, have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (c) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired on the election of their successors; or
  - (d) the association's assets are being misapplied or wasted.
- (3) An association may be dissolved in a proceeding by a creditor if it is established that:
- (a) the creditor's claim has been reduced to a judgment, the execution on the judgment has been returned unsatisfied, and the association is insolvent; or
  - (b) the association is insolvent and the association has admitted in writing that the creditor's claim is due and owing.
- (4) An association may be dissolved in a proceeding by the association to have its voluntary dissolution continued under court supervision.

Enacted by Chapter 70, 2003 General Session

### **3-1-20.2 Procedure for judicial dissolution.**

- (1)

- (a) A proceeding by the attorney general to dissolve an association shall be brought in either the district court of the county in which the principal office or registered office of the association is situated, or the district court of Salt Lake County.
- (b) A proceeding brought by any other party specified in Section 3-1-20.1 shall be brought in the district court of the county where the association's principal office is or, if it has no principal office in this state, where its registered office is or was last located.
- (2) It is not necessary to make members parties to a proceeding to dissolve an association unless relief is sought against them individually.
- (3) A court, in a proceeding brought to dissolve an association, may issue injunctions, appoint a receiver or custodian pendent elite with all powers and duties the court directs, take other action required to preserve the association assets wherever located, and carry on the business of the association until a full hearing can be held.

Enacted by Chapter 70, 2003 General Session

### **3-1-20.3 Receivership or custodianship.**

- (1)
  - (a) A court, in a judicial proceeding to dissolve an association, may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the association.
  - (b) The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian.
  - (c) The court, appointing a receiver or custodian, has exclusive jurisdiction over the association and all of its property wherever located.
- (2)
  - (a) The court may appoint an individual, or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian.
  - (b) The court may require the receiver or custodian to post bond, with or without securities, in an amount the court directs.
- (3)
  - (a) The court shall describe the powers of the receiver or custodian in its appointing order, which may be amended.
  - (b) The receiver:
    - (i) may dispose of all or any part of the assets of the association wherever located, at a public or private sale, if authorized by the court; and
    - (ii) may sue and defend in its own name as a receiver of the association in all courts of this state.
  - (c) The custodian may exercise all of the powers of the association, through or in place of its board of directors or officers, to manage the affairs of the association in the best interests of its members and creditors.
- (4) During a receivership, the court may designate the receiver a custodian, and during a custodianship may designate the custodian a receiver, if the action is in the best interests of the association, its members, and its creditors.
- (5) During the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the association or proceeds from the sale of the assets.

Enacted by Chapter 70, 2003 General Session

### **3-1-20.4 Decree of dissolution.**

- (1)
  - (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in Section 3-1-20.1 exist, it may enter a decree dissolving the association and specifying the effective date of the dissolution.
  - (b) The clerk of the court shall deliver a certified copy of the decree to the Division of Corporations and Commercial Code for filing.
- (2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the association's business and affairs in accordance with Section 3-1-20 and the giving of notice to its registered agent, or to the Division of Corporations and Commercial Code if it has no registered agent, and to claimants in accordance with said section.
- (3) The court's order may be appealed as in other civil proceedings.

Enacted by Chapter 70, 2003 General Session

### **3-1-21 Existing associations continued under chapter.**

- (1) This act shall be applicable to any existing association formed under any law of this state providing for the incorporation of agricultural cooperative associations, for a purpose for which an association may be formed under this act, and particularly to associations formed under the Agricultural Cooperative Association Act, and all such associations shall have and may exercise and enjoy all the rights, privileges, authority, powers, and capacity heretofore granted, and all such associations shall have and may also exercise and enjoy all the rights, privileges, authority, powers, and capacity granted or afforded under and in pursuance of this act to the same extent and effect as though organized hereunder.
- (2) Any cooperative association heretofore organized by producers of agricultural products under Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, for purposes in this act provided, may bring itself under and within the terms of this act as if organized hereunder and may thereafter operate in pursuance of the terms hereof, and may exercise and enjoy all the rights, privileges, authority, powers, and capacity afforded and provided for under the terms of this act, by filing with the Division of Corporations and Commercial Code, a sworn statement signed by the president and secretary of such association, to the effect that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself within the terms of this act.

Amended by Chapter 324, 2010 General Session

### **3-1-22 Accrued rights not affected by chapter.**

This act does not impair nor affect any act, offense committed, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this act had not been passed.

Amended by Chapter 378, 2010 General Session

### **3-1-23 Use of term "cooperative" limited.**

No person, firm, corporation, or association, domestic or foreign, hereafter commencing business in this state shall use the word "cooperative" as a part of its corporate or business

name unless it has complied with the provisions of this act or some other statute of this state relating to co-operative associations. A foreign association organized under and complying with the co-operative law of the state of such association's creation shall be entitled to use the term "cooperative" in this state if it has obtained the privilege of doing business in this state.

No Change Since 1953

**3-1-24 Eligible foreign corporations may operate under chapter.**

A foreign corporation that can qualify as an association, as defined in Section 3-1-2, may be authorized to do business in this state under the provisions of this act by complying with the laws relating to foreign corporations doing business in the state. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

Amended by Chapter 7, 1977 General Session

**3-1-25 Filing of annual reports.**

Domestic associations and foreign associations admitted to do business in this state shall file an annual report in accordance with Section 16-6a-1607.

Amended by Chapter 300, 2000 General Session

**3-1-26 Separability clause.**

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Amended by Chapter 378, 2010 General Session

**3-1-27 Construction of chapter.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

No Change Since 1953

**3-1-28 Short title.**

This act may be cited as the Uniform Agricultural Cooperative Association Act.

No Change Since 1953

**3-1-29 Inconsistent acts repealed -- Existing associations continued.**

All acts and parts of acts which are inconsistent with the provisions of this act are repealed. It is intended by the enactment of this measure to continue in good standing all existing associations organized under similar acts heretofore existing, and in no way to detract from or interfere with the continued operations of such associations, and it is intended that this act shall supersede Title 2, Revised Statutes of Utah, 1933, in the interest of the further aid, encouragement, strengthening, and stabilizing of all such associations.

No Change Since 1953

**3-1-30 Authorization for merger or consolidation with other associations or corporations -- Laws governing surviving or new corporation.**

- (1) Pursuant to a plan approved under this chapter, an agricultural cooperative association may merge or consolidate with:
  - (a) one or more agricultural cooperative associations;
  - (b) one or more domestic corporations governed by:
    - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
    - (ii) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or
  - (c) any combination of associations or corporations referred to in Subsection (1)(a) or (b).
- (2) The surviving or new corporation shall be governed by:
  - (a) the Uniform Agricultural Cooperative Association Act; or
  - (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

Amended by Chapter 300, 2000 General Session

**3-1-31 Contents and approval of plan of merger or consolidation.**

- (1) The board of directors, board of trustees, or other governing board of each party to the merger or consolidation shall, by resolution adopted by each board, approve a plan of merger or consolidation.
- (2) The plan shall contain:
  - (a) the name of:
    - (i) each association or corporation proposing to merge or consolidate; and
    - (ii)
      - (A) the association or corporation into which they propose to merge or consolidate, also referred to as the surviving corporation; or
      - (B) the new corporation;
  - (b) the terms and conditions of the proposed merger or consolidation;
  - (c) the manner and basis of converting stock or shares of each party to the merger or consolidation, into stock, shares, or other securities or obligations of the surviving or new corporation;
  - (d) the manner and basis of converting membership interests of each party to the merger into membership interests, stock, shares, or other securities or obligations of the surviving or new corporation;
  - (e) the manner and basis of converting any certificates of interest, patronage refund certificates, or other interests in any fund, capital investment, savings, or reserve of each party to the merger or consolidation into stock, shares, or other securities or obligations of or certificates of interest, patronage refund certificates, or other interests in any fund, capital investment, savings or reserve of the surviving or new corporation, including any changes to be made in the time and manner of payment of the certificates or interests;
  - (f) a statement electing whether the surviving or new corporation shall be governed by:
    - (i) the Uniform Agricultural Cooperative Association Act; or
    - (ii) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;
  - (g) a statement of any changes in the articles of incorporation of the surviving or new corporation effected by the merger or consolidation, including changes required by the law governing the surviving or new corporation; and

- (h) any other provision relating to the proposed merger or consolidation considered to be necessary or desirable.

Amended by Chapter 300, 2000 General Session

**3-1-32 Notice to members and shareholders of meeting to vote on plan of merger or consolidation.**

- (1) After approval of the plan under Section 3-1-31, the members or shareholders shall vote on the plan at an annual or special meeting.
- (2) The members shall be given written notice specifying:
  - (a) the place, date, and time of the meeting;
  - (b) whether the meeting is an annual or a special meeting; and
  - (c) that a purpose of the meeting is to consider and vote upon the plan of merger or consolidation.
- (3) The notice shall be delivered:
  - (a) at least 20 but not more than 90 days before the date of the meeting;
  - (b) either personally or by mail, at the discretion of the president, chairman, or secretary of the association or corporation;
  - (c) to each current member entitled to vote under the articles of incorporation or bylaws of each party to the merger or consolidation, if the party is a cooperative having members; and
  - (d) to each shareholder entitled to vote under the articles of incorporation or bylaws, of each party to the merger or consolidation having shareholders or stockholders, if the party is not a cooperative.
- (4)
  - (a) If mailed, notice shall be considered to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the membership books or stock transfer books of the association or corporation, with postage prepaid.
  - (b)
    - (i) The notice shall include a copy or a summary of the plan of merger or consolidation.
    - (ii) If a summary is provided, the notice shall state that a copy of the plan of merger or consolidation will be furnished to any member or shareholder upon request and without charge.

Amended by Chapter 203, 1994 General Session

**3-1-33 Determination of members and shareholders entitled to notice of or to vote on plan of merger or consolidation.**

- (1) Only current members of associations and shareholders of noncooperative corporations may vote on plans of merger or consolidation.
- (2)
  - (a) To determine members and shareholders entitled to receive notice of and to vote at a meeting, the board of directors, board of trustees, or other governing board of each party to the merger or consolidation may set in advance a record date for the determination of current members and shareholders.
  - (b) The record date may not be more than 90 days or less than 20 days prior to the date of the meeting.



- (3) If no record date is set for the determination of members and shareholders entitled to notice of or to vote at the meeting, the date on which notice of the meeting is mailed shall be the record date for the determination of members and shareholders.
- (4) If a determination of members or shareholders entitled to vote at the meeting has been made as provided in this section, the determination shall apply to an adjournment.

Amended by Chapter 202, 1994 General Session

**3-1-34 Quorum at meeting to vote on plan of merger or consolidation.**

The current members present or voting by signed ballot, if voting by ballot is allowed by the association's bylaws, of each cooperative association which is a party to the merger or consolidation and the shareholders present or voting by proxy or by delegate of each noncooperative corporation which is a party to the merger or consolidation shall constitute a quorum at the meeting called to vote upon the merger or consolidation unless the plan requires a greater number to constitute a quorum at the meeting.

Amended by Chapter 202, 1994 General Session

**3-1-35 Procedure at meeting to vote on plan of merger or consolidation -- Abandonment of merger or consolidation prior to filing articles.**

- (1) At each meeting, a vote of the current members of each cooperative party to the merger or consolidation having members and a vote of the shareholders of each party to the merger or consolidation having stock or shares shall be taken on the proposed plan of merger or consolidation.
- (2)
  - (a) If the articles of incorporation or bylaws of any party to the merger or consolidation provide for the election by members or shareholders at district meetings of delegates to vote at annual or special meetings of the association or noncooperative corporation, these procedures shall be followed, and the vote of the delegates at the meeting where the plan of merger or consolidation is voted on shall be counted in the same way and entitled to the same weight as a vote of the delegates at any other meeting of the association or noncooperative corporation.
  - (b) Members of cooperative parties may vote in person or by signed ballot, if voting by ballot is allowed in the association's bylaws.
  - (c) Shareholders or their delegates of noncooperative parties may vote in person or by written proxy.
- (3) The plan of merger or consolidation shall be approved by a 2/3 majority of:
  - (a) the voting members of cooperative parties; and
  - (b) holders or delegates of holders of the outstanding shares of noncooperative parties.
- (4) After approval by a vote of the members and shareholders of each party to the merger or consolidation and prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

Amended by Chapter 378, 2010 General Session

**3-1-36 Articles of merger or consolidation -- Execution, contents, and filing of articles -- Issuance of certificate of merger or consolidation -- Fees.**

- (1) Upon approval, articles of merger or consolidation shall be signed in duplicate by each party to the merger or consolidation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers of each association and corporation signing the articles.
- (2) The articles shall set forth:
  - (a) the plan of merger or consolidation;
  - (b) a statement:
    - (i) of the date of the meeting at which the plan of merger or consolidation was considered and voted upon;
    - (ii) that a quorum was present at the meeting; and
    - (iii) that notice of the meeting was given to all members and shareholders entitled to notice;
  - (c) the number of members entitled to vote and the number of shares outstanding entitled to vote; and
  - (d) the number of members who voted for and against the plan, respectively, and the number of shares voted for and against the plan, respectively.
- (3)
  - (a) Duplicate originals of the articles of merger or consolidation shall be delivered to the Division of Corporations and Commercial Code and the fee established under Section 63J-1-504 shall be paid.
  - (b) If the Division of Corporations and Commercial Code finds that the articles conform to law, it shall, after the fees have been paid:
    - (i) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing;
    - (ii) file one of the duplicate originals in its office; and
    - (iii) issue a certificate of merger or consolidation, attach the other duplicate original, and return the certificate to the surviving or new corporation, or its representative.

Amended by Chapter 183, 2009 General Session

### **3-1-37 Effect of merger or consolidation.**

- (1) After the certificate of merger or consolidation is issued by the Division of Corporations and Commercial Code, the merger or consolidation shall be effected.
- (2) When the merger or consolidation has been effected:
  - (a) The associations or corporations which are parties to the plan of merger or consolidation shall be a single corporation designated in the plan of merger or consolidation as the surviving or new corporation.
  - (b) The separate existence of all associations and corporations which are parties to the merger or consolidation, except the surviving or new corporation, shall cease.
  - (c) The surviving or new corporation shall have all of the rights, privileges, immunities, and powers and be subject to all the duties and liabilities of a corporation organized under this chapter or under the Utah Nonprofit Corporation and Cooperative Association Act, whichever act or chapter is specified in the plan of merger or consolidation.
  - (d)
    - (i) The surviving or new corporation shall possess all rights, privileges, immunities, and franchises of each of the merging associations and corporations.
    - (ii) All property, debts due, including subscriptions to shares, all other choses in action, and all interests of each of the associations and corporations merged or consolidated, shall be taken, transferred to, and vested in the single corporation immediately.

- (iii) The title to or interest in any real estate vested in any of the associations or corporations may not revert or be in any way impaired by the merger or consolidation.
- (e)
  - (i) The surviving or new corporation shall be responsible and liable for all the liabilities and obligations of each of the associations and corporations which merged or consolidated.
  - (ii) Any claim existing or action or proceeding pending by or against any of the associations and corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place.
  - (iii) The rights of creditors or any liens upon the property of any association or corporation may not be impaired by the merger or consolidation.
- (f) The articles of incorporation of the surviving or new corporation may be amended, if changes in the articles of incorporation are stated in the plan of merger or consolidation.

Amended by Chapter 378, 2010 General Session

**3-1-38 Procedure for and effect of merger or consolidation of foreign and domestic corporations or associations.**

- (1) Foreign and domestic corporations or associations may be merged or consolidated if:
  - (a) the merger or consolidation is permitted by the laws of the state under which the foreign corporation or association is organized; and
  - (b) the surviving or new corporation will be governed by laws similar to those governing this chapter or the Utah Nonprofit Corporation and Cooperative Association Act.
- (2) Each domestic association and corporation shall comply with the provisions of this chapter regarding the merger or consolidation of domestic associations and corporations and each foreign association or corporation shall comply with the applicable provisions of the laws of the state under which it is organized.
- (3)
  - (a) If the surviving or new corporation is to be governed by the laws of any state other than this state, it shall comply with the provisions of the laws of this state regarding foreign corporations.
  - (b) If the surviving or new corporation is to transact business in this state, it shall file with the Division of Corporations and Commercial Code:
    - (i) an agreement that it may be served with process in this state in any proceeding for the enforcement of an obligation of a domestic association or corporation which is a party to the merger; and
    - (ii) an irrevocable appointment of the director of the Division of Corporations and Commercial Code of this state as its agent to accept service of process in the proceeding.
- (4)
  - (a) The effect of the merger or consolidation shall be the same as the merger or consolidation of domestic associations and corporations, if the surviving or new corporation is to be governed by the laws of this state.
  - (b) If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of the merger or consolidation shall be the same as the merger or consolidation of domestic associations or corporations, unless otherwise provided by the laws of the other state.
- (5) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

Amended by Chapter 203, 1994 General Session

**3-1-41 Domestic or foreign corporations or associations -- Plan of merger -- Articles of merger -- Certificate of merger.**

- (1)
  - (a) A Utah cooperative association owning 90% of the outstanding shares of each class of a foreign or domestic corporation or association may merge such other corporation or association into itself without the approval of the shareholders or members of either corporation or association.
  - (b) The governing board shall, by resolution, approve a plan of merger setting forth:
    - (i) the name of the subsidiary corporation or association and the name of the corporation or association owning 90% or more of its shares, which is hereafter designated as the surviving corporation or association; and
    - (ii) the manner and basis for converting each class of shares of the subsidiary corporation or association into shares, obligations, or other securities of the surviving corporation or association, or of any other corporation or association, in whole or in part, into cash or other property.
  - (c) A copy of the plan of merger shall be mailed to each record member or shareholder of the subsidiary corporation or association.
- (2)
  - (a) Articles of merger shall be executed in triplicate by the president or vice president and the secretary or an assistant secretary of the surviving corporation or association and verified by one of its officers.
  - (b) The articles of merger shall set forth:
    - (i) the plan of merger;
    - (ii) the number of outstanding shares of each class of the subsidiary corporation or association and the number of such shares of each class owned by the surviving corporation or association; and
    - (iii) the date a copy of the plan of merger was mailed to shareholders or members of the subsidiary corporation or association.
- (3)
  - (a) Triplicate originals of the articles of merger shall be delivered to the Division of Corporations and Commercial Code on the 30th day after mailing a copy of the plan to shareholders or members.
  - (b) If that division finds such articles conform to law and that all fees prescribed by this act have been paid, it shall:
    - (i) endorse on each of said triplicate originals the word "filed," together with the month, date, and year of filing;
    - (ii) file one of the triplicate originals with the Division of Corporations and Commercial Code and forward another triplicate original to the state Department of Agriculture and Food; and
    - (iii) issue a certificate of merger with the remaining triplicate original affixed.
  - (c) The certificate of merger, together with a triplicate original of the articles of merger affixed by the Division of Corporations and Commercial Code, shall be returned to the surviving corporation or association or its representative.
- (4) The merger of a foreign corporation or association into a Utah cooperative association shall conform to the laws of the state under which each such foreign corporation or association is organized.

Amended by Chapter 306, 2007 General Session

**3-1-42 Association's records.**

- (1) An association shall keep as permanent records:
  - (a) minutes of meetings of its members and board of directors;
  - (b) a record of each action taken by the consent of the members or board of directors without a meeting;
  - (c) a record of each action taken on behalf of the association by a committee of the board of directors in place of the board of directors; and
  - (d) a record of waivers of notices of meetings of members, board of directors, or committees of the board of directors.
- (2) An association shall maintain:
  - (a) appropriate accounting records; and
  - (b) a record of the names and addresses of its members and shareholders.
- (3) An association shall maintain its records in written form or in a form capable of being converted into written form within a reasonable time.
- (4) An association shall keep a copy of the following records at its principal office:
  - (a) its most current articles of incorporation;
  - (b) its most current bylaws;
  - (c) the minutes of meetings of members, board of directors, and committees for the past three years;
  - (d) a list of the names and business addresses of its current officers and directors;
  - (e) its most recent annual reports delivered to the division as provided under Section 3-1-25; and
  - (f) financial statements prepared for periods ending during the last three years.

Enacted by Chapter 204, 1994 General Session

**3-1-43 Inspection of records.**

- (1) Unless waived by the association, an association's books and records kept pursuant to Subsection 3-1-42(4) may only be inspected and copied by a member or by the member's duly authorized agent or attorney:
  - (a) during regular business hours;
  - (b) at the association's principal office; and
  - (c) if three business days prior written notice was given to the association, and the notice specifies the records which the member desires to inspect.
- (2)
  - (a) The association may impose a reasonable fee, payable in advance, to cover the cost of labor and materials for copies of any documents to be provided to the member.
  - (b) The fee may not exceed the estimated cost of production or reproduction of the records.
- (3) The member or the member's agent or attorney may not disclose to third parties any information obtained from the books and records of the association without the prior written consent of the association.
- (4) Nothing in this section shall impair the power of any court of competent jurisdiction to compel the production of the records of the association for examination by a member.
- (5) Upon written request of any member of the association, the association shall mail to the member its annual and most recently published financial statements showing in reasonable detail its assets and liabilities and results of operations.

Enacted by Chapter 204, 1994 General Session

**3-1-44 Registered office and agent.**

- (1) An association shall continuously maintain a registered office in this state. The registered office may be the principal place of business of the association.
- (2)
  - (a) An association shall designate a registered agent.
  - (b) The registered agent may be a person residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state.
  - (c) The registered agent's address shall be the same as that of the registered office.
- (3)
  - (a) An association shall file a statement with the Division of Corporations and Commercial Code designating or changing its registered office, its registered agent, or both.
  - (b) The statement in Subsection (3)(a) shall set forth:
    - (i) the name of the association;
    - (ii) the address of the association's registered office;
    - (iii) the name of the association's registered agent and the registered agent's address; and
    - (iv) a statement that the designation or change was authorized by a resolution of the board of directors.
- (4)
  - (a) A registered agent of an association may resign by filing with the division a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the association at its principal place of business.
  - (b) The appointment of the agent terminates 30 days after notice is filed with the division.
- (5) Service of process, notice, or any demand upon an association shall be made as provided in Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 364, 2008 General Session

**3-1-45 Sale, mortgage, and lease of assets.**

- (1)
  - (a) The association may sell, lease, exchange, mortgage, pledge, dispose of, or repay a debt with any of the property and assets of an association, if this action is made in the usual and regular course of business of the association.
  - (b) The action taken under Subsection (1)(a) may be made upon the terms and conditions and for consideration as are authorized by the board of directors.
- (2) Consideration may include money or property, real or personal, including shares of any other association or corporation, domestic or foreign, as is authorized by the association's board of directors.
- (3) If the articles of incorporation provide for the mortgage or pledge of the property of the association by its directors, then the mortgage or pledge of all, or substantially all, of the property or assets, with or without the good will of an association, is considered to be made in the usual and regular course of its business.
- (4) If the action taken under Subsection (1) is not made in the usual regular course of the association's business, the action may still be taken if the following requirements are complied with:

- (a) The board of directors shall adopt a resolution recommending the action, and the members shall vote at an annual or special meeting of members.
- (b) Written or printed notice of the meeting shall be given to each member entitled to vote as provided in this chapter.
- (c)
  - (i) At the meeting in which the action is considered, the members may authorize the action described in Subsection (1) and set the terms, or may authorize the board of directors to set the terms, conditions, and consideration to be received by the association.
  - (ii) A two-thirds majority vote of the members is required to approve the action specified in Subsection (1).
- (d) The board of directors may abandon the action, even if approved by the members, subject to the rights of third parties under any related contracts, without further action or approval by members.

Amended by Chapter 324, 2010 General Session

**3-1-46 Conversion to a limited cooperative association.**

An association under this title may convert to a limited cooperative association under Title 16, Chapter 16, Uniform Limited Cooperative Association Act, by complying with that chapter.

Enacted by Chapter 363, 2008 General Session